

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re MICHAEL L., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL L.,

Defendant and Appellant.

A148078

(Contra Costa County
Super. Ct. No. J1200746)

Defendant and appellant Michael L. appeals from a post-dispositional order of the Contra Costa County juvenile court denying his petition under Proposition 47 to reclassify one of his felony convictions for receipt of stolen goods as a misdemeanor (Pen. Code, § 496, subd. (a)), and to expunge his DNA sample previously ordered to be collected under Penal Code section 496. The appeal is authorized by Welfare and Institutions Code section 800, subdivision (a). Michael's court-appointed attorney has filed a brief raising no issues and asking this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

STATEMENT OF THE CASE

On May 8, 2012, the District Attorney of Contra Costa County filed a petition pursuant to Welfare and Institutions Code section 602(a) alleging that on May 2, 2012,

Michael, together with another youth, committed two first-degree, felony residential burglaries in violation of Penal Code section 459, at two different homes.

On August 21, 2012, pursuant to a plea bargain, the felony burglary counts were dismissed and instead Michael pled no contest to amended counts alleging two felony violations of receiving stolen property (Pen. Code, §496, subd. (a)), and also admitted allegations of an amended misdemeanor count of unlawful taking or driving a vehicle concerning an incident on another date (Veh. Code, §10851, subd. (a)). The petition was sustained, as amended, and subsequently Michael was placed on probation under specified terms and conditions and served four months in an out-of-home placement. Although the juvenile court's disposition order is not in the record, the parties' filings below reflect that the juvenile court also ordered Michael to submit a DNA sample pursuant to Penal Code section 296. The court later ordered Michael to pay \$4,901.55 of a \$8,337.18 restitution award to one of the homeowners involved.¹

Several years later, following the passage of Proposition 47, Michael filed a petition on March 16, 2016, under Welfare and Institutions Code sections 726, subdivision (d), 775 and 778 requesting that his two felony convictions be reduced to misdemeanors and the maximum term of his confinement be recalculated because the value of stolen property received was less than \$950, and also requesting the court to vacate its prior order directing the collection of his DNA sample and to order the expungement of his DNA sample from the California Department of Justice CAL-DNA databank. The petition also requested that "the previously ordered fine pursuant to Welfare and Institutions Code section 790.6 be reduced to an amount in accordance with misdemeanor true findings."

On March 22, 2016, the juvenile court granted the petition only in part. It reduced one of the felony counts to a misdemeanor charge of petty theft (Pen. Code, §490.2), but declined to reduce the other felony conviction to a misdemeanor because it found the

¹ The juvenile court anticipated ordering another youth who participated in the offense to pay the balance.

value of stolen property Michael received during one of the home invasions exceeded \$950. The court also denied Michael's request to expunge his DNA sample. On April 5, 2016, Michael timely appealed the March 22, 2016 order.

FACTUAL BACKGROUND

According to information contained in the police report and the later probation report, the burglary-related offenses took place on the morning of May 2, 2012, in Pleasant Hill, California. Responding to a neighbor's report of suspicious activity, police interrupted a residential burglary in progress, discovered Michael and another boy inside the home and took them into custody after they attempted to flee through an open window.

According to the police report, the youths had gone through items in the family room and in a back bedroom belonging to the homeowner's son which, from the condition of the bedroom window, appeared to have been their point of entry. In the family room, police found two backpacks belonging to Michael and his accomplice stuffed with the homeowner's property: Michael's backpack contained 12 Nintendo video games he admitted to police were "[f]rom the house," and his accomplice's backpack contained electronic videogame components that admittedly belonged to the homeowners too (specifically, Wii controllers and a Nintendo DS game console). In addition, a Dell laptop had been taken from a computer desk in the family room and moved to the son's bedroom where it was found stuffed into the son's backpack and left on the bed. According to the homeowner's later restitution claim, the laptop was worth \$899.99.² The son's closet had been ransacked too, and items thrown on the bed.

Michael and the other youth admitted to police they burglarized the house. Michael told police he was "broke" and needed the money to buy clothes. In addition, two stolen bicycles were found outside the house, which Michael and the other youth also

² The laptop was included in the homeowner's restitution claim because it had been damaged during the break-in.

admitted having taken from another house earlier in the day along with a \$2 bill.³ A third youth was involved, too, detained elsewhere by police the same morning. Michael later told the probation department he committed the burglaries with his friends that day because he had heard other people talk about burglarizing homes, and they always had money and nice clothes and thought he would too if he did the same.

DISCUSSION

We have reviewed the record on appeal for any arguable issues and have found none.

In moving to redesignate his offense as a misdemeanor pursuant to Proposition 47 (see Pen. Code, §1170.18), it was Michael’s burden to show that the value of property involved was less than \$950. (See *People v. Sherow* (2015) 239 Cal.App.4th 875; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 448–450.) He introduced no evidence below on this subject, nor was his petition verified as required by section 778, subdivision (a)(1) of the Welfare and Institutions Code. For purposes here, however, we overlook these deficiencies because the record amply supports the trial court’s finding that the property involved in the second home invasion exceeded \$950. The laptop alone was worth nearly \$900, and it was irrelevant who might have moved it there, whether Michael or his accomplice. “Possession of the stolen property may be actual or constructive and need not be exclusive,” and “[i]t is sufficient if the defendant acquires a measure of control or dominion over the stolen property.” (*People v. Land* (1994) 30 Cal.App.4th 220, 223–224; see also, e.g., *People v. Scott* (1951) 108 Cal.App.2d 231, 234 [affirming use of jury instruction stating, inter alia, that “ ‘two or more persons may have joint possession of property if jointly they have . . . dominion, control and exclusive possession’ ” of it]; *People v. Day* (1916) 30 Cal.App. 762 [per curiam] [burglary accomplice properly convicted of receiving stolen goods].) Combined with the value of other loot stuffed into backpacks—video games, a video game console, and game

³ The trial court later found the value of the stolen bicycles was less than \$950, and on that basis reduced Michael’s felony violation to a misdemeanor for this count.

controllers— the juvenile court could easily infer the total value exceeded \$950. Furthermore, Michael’s admitted motive was to steal for money so he could afford nice clothes, so the court could infer he targeted items that were of significant value.

Below, defense counsel did not contest that the aggregate value of all property found disturbed at the scene exceeded \$950; her only argument was that Michael had to be found in possession of the items to be guilty of receipt of stolen property. That is not the law. Past possession suffices. (See *People v. Taylor* (1969) 2 Cal.App.3d 979, 983 [affirming conviction based on evidence defendant “had ‘possessed’ the stolen gun,” which was found some distance from where he was questioned by police].) And these goods unquestionably *were* stolen, even though the break-in was aborted and Michael and his accomplice were apprehended. “Severance followed by the slightest movement away from the place of taking is sufficient; the amount and the distance are immaterial.” (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Property, § 16, p. 41; see, e.g., *People v. Tijerina* (1969) 1 Cal.3d 41, 46–47; *People v. Shannon* (1998) 66 Cal.App.4th 649, 655–656; *People v. Khoury* (1980) 108 Cal.App.3d Supp. 1, 4–5.)

Our review of the remainder of the record discloses no arguable issues that require further briefing.

DISPOSITION

The March 22, 2016 order denying portions of Michael’s March 16, 2016 “Petition For Designation of Felony Adjudication As Misdemeanors Pursuant To Proposition 47 And For Recalculation of Maximum Term of Confinement,” is affirmed.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

In re Michael L. (A148078)